vance of what the deceased but for the fatal accident would receive.

Accordingly, we vary the judgment below as follows: we substitute the sum of $338,966.04 for $125,000 as damages for the loss of earnings during the lost years, and award interest on the sum of $10,100 at 6% per annum from the date of the issue of the writ to date of judgment of the High Court. The respondents will have to pay the costs of his appeal. There will be the usual consequential order for refund to the appellant or his solicitors of the amount deposited in court as security for costs of the respondents.

Order accordingly.

Solicitors. *Murphy & Dunbar; Khattar Wong & Partners; Cooma, Lau Loh & M. Karthigesu.*

ARUMUGAM & ANOR. v. LIM BOON NEO

[C.A. (Wee Chong Jin C.J., Sinnathuray & Thean JJ.) October 9, 1987]

[Singapore – Civil Appeal No. 82 of 1984]

Land Law – Whether tenancy was created.

Civil Procedure – Whether appellate court justified in reversing trial judge's decision.

The appellants were the administrators of the estate of their deceased mother, Perumal Ramayee. The respondent is the widow of G. Sarangapany. G. Sarangapany and the father of the appellants were partners of a company called S.V. Co.

The appellants alleged that Perumal Ramayee had granted a licence to S.V. Co. to store their goods and to provide accommodation to one Ramasamy at the premises, the subject matter of the present action.

The respondent's defence was that the deceased had orally granted a tenancy of the said premises. They also alleged that they had paid rent for the premises. The respondent claimed to be tenant of the premises by virtue of her succeeding to the business upon her husband's death. The appellants claimed possession of the premises. The learned trial judge concluded that the respondent had failed to prove, on a balance of probabilities, the existence of the tenancy alleged and that S.V. Co. had been granted a mere licence by the deceased to store goods on the premises. The respondent appealed. The learned appellate judge allowed the appeal. The appellant appealed to the Court of Appeal.

Held, allowing the appeal: (1) in the circumstances of the present case and where there appears that the judge had not misdirected himself and the recorded evidence did not unmistakably disclose that the judge had failed to take proper advantage of his having seen and heard the witnesses, the learned appellate judge ought not to have treated the matter at large and to reverse the decision of the trial judge;

(2) in this case the safest and, in principle, the correct course was to accept the trial judge's decision and to conclude that there was not sufficient material for the learned appellate judge to reject the result arrived at by the trial judge;

(3) the trial judge's decision was restored.

Cases referred to:

(1) *Watt (Thomas)* v. *Thomas* [1947] A.C. 484.
(2) *Benmax* v. *Austin Motor Co.* [1955] 1 All E.R. 326.

COURT OF APPEAL.

Y.R. Jumabhoy (*P. Balagopal* with him) for the appellants.

Karuppan Chettiar for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): This appeal is from the decision of the High Court allowing the respondent's appeal against the judgment of a District Court awarding the appellants possession of premises known as No. 20 Klang Road, Singapore, ("the premises"), and damages against the respondent and one Ramasamy, the 2nd defendant in the action. Ramasamy, however, is not a party to this appeal.

It may be helpful to first set out the background facts which are not in dispute. The appellants are the administrators of the estate of their deceased mother Perumal Ramayee, the widow of their deceased father S.A. Renganathan. Perumal Ramayee died on September 18, 1973. The respondent is the widow of G. Sarangapany. Before his death S.A. Renganathan was the managing partner of a firm trading in textiles under the style or firm name of Sithi Vinayagar Company ("S.V. Co."). G. Sarangapany was the other partner of S.V. Co.

Under the partnership agreement, on the death of a partner his share devolves on the surviving partner. S.A. Renganathan died on May 2, 1973, and accordingly Sarangapany became the sole proprietor of S.V. Co. Sarangapany died on March 16, 1974, and under his will his widow, the respondent, as sole beneficiary became the proprietor of S.V. Co.

In the year 1962, Perumal Ramayee purchased

the premises and she and her husband, S.A. Renganathan, and their children, the appellants, lived there until the middle of 1966 when they, with the exception of the 1st appellant, Arumugam, moved to another property which Perumal Ramayee had recently purchased. Perumal Ramayee was also the owner of four other properties all of which prior to 1966 were let to S.V. Co. In respect of these four properties, rent receipts were issued for the rents paid by S.V. Co. The rents so paid were credited to Perumal Ramayee in a separate account in the account books of S.V. Co. and all outgoings in respect of these four properties were debited against Perumal Ramayee's account. No rent receipts were produced in evidence in respect of rents alleged to have been paid by S.V. Co. in respect of the premises No. 20 Klang Road although there is in evidence a document (not in English) prepared by a witness, Thittany Pillay (D.W.3), allegedly at the request of Perumal Ramayee for her accounts. The translation of the document sets out the "Rental Expenses of Store 20, Klang Road" for the years ending December 31, 1966 to December 31, 1972 inclusive. It is to be noted that the "rental expenses" of each of these seven years were $564.

In their statement of claim filed on August 7, 1979, the appellants alleged that Perumal Ramayee had merely granted S.V. Co. a licence to store their goods and to provide accommodation to Ramasamy. The appellants further alleged that since the death of Sarangapany on March 16, 1974, the respondent had been in occupation of the premises without lawful authority.

The respondent's defence was that the deceased had in or about 1966 orally granted a tenancy of the premises to S.V. Co. The respondent also alleged in her amended defence that S.V. Co. had paid Perumal Ramayee rent at $47 per month from the commencement of the tenancy, and at $150 per month from January 1971. The respondent claimed to be a tenant of the premises by virtue of her succeeding to the business upon her husband's death.

It is common ground that the premises are rent-controlled premises within the ambit of the Control of Rent Act. The sole issue for determination was whether Perumal Ramayee had granted S.V. Co. a tenancy of the premises in 1966. If a tenancy had been granted, the respondent would be a protected tenant of the premises under the Control of Rent Act. If, on the other hand, no tenancy had been granted, the appellants would be entitled to possession of the premises.

At the trial, the first appellant Arumugam gave evidence. He said that when his parents moved out in July 1966 they had no intention of letting the premises and that he continued to live there. At about that time, an employee of S.V. Co., Ramasamy, the second defendant, approached his father to allow him to live in the premises as he intended to bring his wife and family from India and so was looking for a place for them to stay. His father, after several approaches by Ramasamy and after consultation with his mother, eventually agreed and on the arrival of Ramasamy's wife in March 1967 they moved in and occupied the premises and he moved out to live with his parents leaving behind his furniture for Ramasamy's use.

After he married in September 1972, his father told Ramasamy of his intention to get back the premises and Ramasamy agreed to move out but asked for time to look for alternative accommodation. A few months later in May 1973, his father died and soon thereafter in September 1973 his mother died and it was only in December 1973 that he took steps to terminate Ramasamy's occupation of the premises.

The respondent's case at the trial that there was a tenancy was primarily based on the account books of S.V. Co. The respondent herself did not have personal knowledge of the tenancy. No rent receipts were produced by the respondent for the rents alleged to have been paid by S.V. Co. The relevant portions of the account books showing that Perumal Ramayee's account with S.V. Co. had been credited with rentals for the premises annually for the period 1966 to 1972 were admitted into evidence as exhibits D1 to D14. These entries also showed that S.V. Co. had on behalf of Perumal Ramayee paid the insurance premiums in respect of the premises and set off these payments against the rentals credited to her account. That these entries were taken from S.V. Co.'s account books was not in dispute.

A public accountant (D.W.2), who was S.V. Co.'s tax advisor and consultant, gave evidence that some of the entries in S.V. Co.'s account books relating to sales and purchases were fictitious. He also gave evidence that several documents relating to the accounts were missing. In cross-examination he stated that as a result, the accounts books would not show a true figure of the company's affairs.

Thittany Pillay (D.W.3) was a crucial witness for the respondent. He was S.V. Co.'s accounts

clerk from 1966 to 1972 and some of the entries in D1 to D14 relating to the rental payments had been made by him. In his examination-in-chief, he confirmed that, amongst others, the entry as to rent in respect of the premises for 1967 was made by him. He then testified as follows:

"Mr. Renganathan managed the business then and Mr. Sarangapany called at the shop once in a week or in a month. Mrs. Renganathan had a separate account with the company. I took my instructions from Renganathan. The money should go to her for the accounts but I do not know whether it did go to her for a fact. In fact Mr. Renganathan himself was objecting to making this particular entry and he only agreed to do so after much persuasion by Mr. Sarangapany. Eventually both of them asked me to make the entry as it would be useful for income tax purposes. Actually no money passed hands and this particular entry would be made at the end of the year in the presence of D.W.2, the company's accountant. The year's accounts would only be finalised in April of the following year. In fact all the 54 entries dated 31.12.66 would be entered only at end of April 1967 before they are sent to the accountant."

Subsequently, during his cross-examination the following exchange took place:

"Q. Can you explain why there were no entries after 1972?

A. There were no entries in the books after 1972 as there was no need to submit these for income tax. I was working in the firm up to 1975.

Q. It is your evidence that the entries in the account books of all rentals paid in connection with premises 20, Klang Road, are all fictitious entries?

A. Yes. They were entered on the insistence of G. Sarangapany.

Q. D.W.2 has told the court you handed the firm's journal every year to him for the preparation of the annual accounts?

A. Yes."

The second defendant, Ramasamy, testified that he had worked for S.V. Co. since 1958 and that for about a year before Perumal Ramayee and her family moved out of the premises in 1966, S.A. Renganathan had also used the ground floor of the premises to store textiles. Ramasamy also said that S.A. Renganathan had told him he could bring his wife from India and stay at the premises and that S.V. Co. would pay the rentals.

On the evidence adduced during the trial, the learned trial judge concluded that the respondent had failed to prove, on a balance of probabilities, the existence of the tenancy alleged, and that S.V. Co. had been granted a mere licence by the deceased to store goods on the premises. The learned trial judge clearly rejected Ramasamy's evidence that S.A. Renganathan had told him S.V. Co. would pay the rental for the premises, and in coming to his conclusion that there was no tenancy, the learned trial judge also took into account the following:

a) that there were no receipts for the alleged payments of rent in respect of the premises whereas rent receipts were issued in respect of the other premises let out to S.V. Co. by Perumal Ramayee;

b) that the Occupiers' Return submitted to the Property Tax Division had described the premises as owner-occupied all along;

c) that the accounts clerk (D.W.3) had referred to some of the entries in S.V. Co.'s account books relating to the alleged payments of rent as fictitious entries;

d) that the accountant (D.W.2) had stated that the account books would not show a true state of S.V. Co.'s affairs as some of the entries concerning sales and purchases were fictitious and a great number of documents were missing;

e) that the respondent had amended her original defence of denial of occupation of the premises to her present defence that she was a protected tenant, without being able to explain why her previous solicitors had pleaded in the manner they did; and

f) that there was no evidence of the respondent having exclusive control of the premises.

On appeal to the High Court, the learned appellate judge took the view that with both Sarangapany and Renganathan dead at the time of the trial, no direct evidence as to the alleged tenancy was available. The learned appellate judge then came to the conclusion that: (1) looking at the contemporaneous records and such evidence as there were from any witness directly bearing on the issue; (2) looking at the factual background including the fact that S.V. Co. had possession of the entire premises with its employee, Ramasamy, living on the first floor; and (3) where S.A. Renganathan was clothed with all the authority to deal with the premises on behalf of his wife, the inference was irresistible that S.A. Renganathan had, on behalf of his wife, orally agreed to grant a tenancy to S.V. Co. at a rent of $47 per month.

The learned appellate judge disagreed with the trial judge's reliance on that part of the accounts clerk's testimony where he had expressed his opinion that some of the entries in the account books as to rent were fictitious. In his view, acceptance of that opinion in this respect was clearly erroneous as that opinion was, on the evidence, simply based on the fact that the entries had been made on the insistence of Sarangapany.

The question we have to decide is whether or not the learned appellate judge is right in substituting his own view for that of the trial judge. It is settled law that in cases where the credibility or reliability of one or more witnesses has been in dispute and where a decision on these matters has led the trial judge to come to his decision on the case as a whole, an appellate court may interfere with the decision of the Judge in limited circumstances. The most cited statement of principle is that of Lord Thankerton in *Watt (Thomas)* v. *Thomas*[1] when he said (at pages 487-488):

"I do not find it necessary to review the many decisions of this House, for it seems to me that the principle embodied therein is a simple one, and may be stated thus: I. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion; II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

It is also settled law that "in cases where there is no question of credibility or reliability of any witness, and in cases where the point in dispute is the proper inference from proved facts, an appellate court is generally in as good a position to evaluate the evidence as the trial judge, and ought not to shrink from that task, though it ought, of course, to give weight to his opinion" (see *Benmax* v. *Austin Motor Co.*[2] per Lord Reid at page 329).

Having regard to his grounds of decision, we have little doubt that the learned trial judge came to his decision on the case as a whole including considering the credibility or reliability of the witnesses who gave direct evidence relevant to the tenancy issue. With respect to the learned appellate judge, we do not agree that there was no direct oral evidence available on this issue. Also, this was not a case where no question of credibility or reliability of witnesses arose. On the contrary, the learned trial judge had to deal with, *inter alia*, the conflicting oral testimonies of Arumugam (the first appellant) and Ramasamy (the second defendant).

Further, we respectfully disagree with the learned appellate judge that the trial judge had misdirected himself with respect to the accounts clerk's evidence. The accounts clerk had given evidence as to the facts and circumstances under which the rent entries came to be made by him. In our view, his evidence was clearly relevant to the issue and we do not think the learned trial judge had, when coming to his decision on the case as a whole, misdirected himself in taking into consideration the accounts clerk's evidence that the rent entries were fictitious entries.

In these circumstances and where there appears that the judge has not misdirected himself and the recorded evidence does not unmistakably disclose that the judge has failed to take proper advantage of his having seen and heard the witnesses, we are of the opinion that the learned appellate judge ought not to have treated the matter at large and to reverse the decision of the trial judge.

Undoubtedly, because the dispute between the parties arose after the deaths of the original partners of S.V. Co., a number of difficulties arose in the presentation of the case from the appellants' and the respondent's point of view. It is possible that not all the facts have been made available but in that state of affairs we are of the opinion that the safest and in principle the correct course is to accept the trial judge's decision and to conclude that there was not sufficient material for the learned appellate judge to reject the result arrived at by the trial judge. In this respect, we would also draw attention to the following statement by Lord Macmillan in *Watt (Thomas)* v. *Thomas*[1] (at page 491):

"So far as the case stands on paper, it not infrequently happens that a decision either way may seem equally open. When this is so, ... then the decision of the trial judge, who has enjoyed the advantages not available to the appellate court, becomes of paramount importance and ought not to be disturbed ..."

Accordingly, the appeal is allowed with costs

here and in the court below and the decision of the trial judge restored.

Appeal allowed.

Solicitors: *Chan Kam Foo & Associates; Murphy & Dunbar.*

MOHAMED RAZIP v. PUBLIC PROSECUTOR ROSLI BIN AMAT v. PUBLIC PROSECUTOR KAMBALI BIN TAKIRAN v. PUBLIC PROSECUTOR

[C.Cr.A. (Wee Chong Jin C.J., Thean & P. Coomaraswamy JJ.) October 1, 1987]

[Singapore – Criminal Appeals Nos. 3, 4 & 5 of 1986]

Criminal Procedure – Bail – Nature of an order on a bail application – Whether Court of Criminal Appeal can hear an appeal from such an order – Criminal Procedure Code (Cap. 68, 1985 Ed.), ss. 217(1), 241 & 354 – Supreme Court of Judicature Act (Cap. 322, 1985 Ed.), ss. 44 & 51.

The three accused in these criminal appeals were charged with the offence of rape under section 376 of the Penal Code. Rape is a non-bailable offence. They applied to the High Court to be admitted to bail pending their trial. These applications were made pursuant to section 354 of the Criminal Procedure Code (Cap. 68, 1985 Ed.). Bail was refused. The three accused appealed.

Held, dismissing the appeals: (1) the jurisdiction of the Court of Criminal Appeal is to hear appeals against orders of finality *i.e.* those resulting in conviction and sentence, or acquittal;

(2) an order made on a bail application, being interlocutory and tentative in nature, does not fall within the purview of section 44 of the Supreme Court of Judicature Act and is thus a non-appealable order.

Cases referred to:

(1) *Re Balasundara Pavalar* A.I.R. 1951 Madras 7.
(2) *Gng Eng Hwoo* v. *Regina* [1954] M.L.J. 256.
(3) *Public Prosecutor* v. *K. Suppiah and 14 Ors.* (Magistrates' Appeal No. 19 of 1967 – unreported).

COURT OF CRIMINAL APPEAL.

S. Vellupillai for the appellant in Criminal Appeal No. 3.

Peter Fernando for the appellant in Criminal Appeal No. 4.

N. Vijaykumar for the appellant in Criminal Appeal No. 5.

Lawrence Ang (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: *Factual Background.* The three accused in these Criminal Appeals were charged with the offence of rape under section 376 of the Penal Code. Rape is a non-bailable offence, as provided in Schedule A to the Criminal Procedure Code. The preliminary inquiry into charges was held in the Subordinate Courts on December 19, 1985 at the conclusion of which the accused were committed for trial in the High Court.

Counsel for each of the accused then applied, by way of Criminal Motions, to the High Court for the accused to be admitted to bail pending their trial. These applications were made pursuant to what is now section 354 of the Criminal Procedure Code (1985 Revised Edition). (All references to statutory provisions hereinafter shall be to the 1985 Revised Edition of the Statutes.) The applications came before Sinnathuray J. who refused to grant bail but directed an early trial instead.

The three accused appealed against the decision of the learned judge. We dismissed all the appeals. We now give our reasons.

Is an order on a bail application appealable?

Section 354 CPC is as follows:

"354(1) The High Court may, in any case whether there is an appeal on conviction or not, direct that any person shall be admitted to bail or that the bail required by a police officer or Magistrate's Court or District Court shall be reduced or increased.

(2) The High Court may at any stage of any proceeding under this Code cause any person who has been released under this section to be arrested and may commit him to custody."

In Singapore, there is no general right of appeal in criminal cases except such as is provided by law. This is made clear by section 241 Criminal Procedure Code which provides:

"241. No appeal shall lie from a judgment, sentence or order of a criminal court except as provided for by this Code or by any other law for the time being in force."

The Criminal Procedure Code contains no provision for an appeal against an order of the High Court made under section 354 Criminal Procedure Code. The appellants can only appeal under "any other law for the time being in force"

We now turn to the Supreme Court of Judicature Act. Section 44 SCJA, which spells out the jurisdiction of the Court of Criminal Appeal to